

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GIANNA KRSTIC)	
)	
Plaintiff,)	
v.)	CIVIL ACTION
)	NO. 18-11585-NMG
SOFREGEN MEDICAL INC. and)	
ALLERGAN, INC.)	
)	
Defendants.)	

**REPORT AND RECOMMENDATION ON PLAINTIFF'S
MOTION TO VACATE AND MOTION FOR LEAVE TO AMEND**

May 9, 2019

DEIN, U.S.M.J.

This matter is before the court on the "Plaintiff's Motion to Alter, Amend and Vacate the Dismissal Pursuant to Federal Rule of Civil Procedure 60(b)(1), (6) and Motion for Leave to Amend the Complaint Pursuant to Federal Rule of Civil Procedure 15(a)(2)" (Docket No. 15). After consideration of the parties' written submissions and their oral arguments, it is hereby ORDERED as follows:

1. The parties agree that the plaintiff's First Amended Complaint (Docket No. 6-1) is the operative complaint.
2. Under Fed. R. Civ. P. 60(b)(1), the court may grant relief from a final judgment or order due to mistake. In the instant case, after granting Sofregen's motion to dismiss, the court entered an order of dismissal of the action. Because Allergan never filed a motion to dismiss and did not otherwise respond to the plaintiff's complaint, it should not have been dismissed

*Report and Recommendation accepted and
adopted. JSM/Gorton, USDJ 7/11/19*